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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of the	)	CC Docket No. 92-115
Commission's Rules Governing	)	
the Public Mobile Services	)	

REPLY COMMENTS OF AMERITECH MOBILE COMMUNICATIONS, INC.

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SUMMARY

The commentors universally support the Commission's stated goals in this proceeding -- namely, clarifying the rules, eliminating unnecessary filing requirements and giving licensees greater flexibility in providing service to the public. While most of the proposed rules will make the Commission's processes more efficient, certain rules could have an unintended consequence: They could undermine licensees' legitimate efforts to build-out their systems and provide service to the public. Therefore, the Commission should make the following modifications to its proposed rules:

- The Commission should specifically define the term "providing service to the public" as any facility which is interconnected to the landline network and capable of providing paging or radiotelephone service. The concept of "service to the public" is an integral part of the scheme established in these rules. This definition will require a substantial commitment from licensees to discourage warehousing of frequencies. It will also establish a clear standard by which to gauge a licensee's conduct. Proposed Section 22.142.
- The Commission should exempt from the one-year no-filing penalty any licensee who is unable to initiate service to the public due to circumstances beyond its control. In addition, a licensee should be able to avoid the penalty by surrendering its authorization prior to the expiration of the construction period. Proposed Section 22.121(d).
- The Commission should modify its conditional licensing proposal to limit the term of the condition to one year. Proposed Section 22.147. This will eliminate any uncertainty about the scope of a licensee's interference

protection after adjacent licensees have a reasonable time to evaluate the impact of the new facilities on their systems.

- The Commission should allow licensees to file Form 489s to protect their transmitters and service areas from interference. Proposed Section 22.163.
- The Commission should clarify that the following are "minor" modifications: (1) Modifications to paging facilities which do not change a licensee's service contour; (2) Additions of cellular transmitters during the fill-in period; (3) Changes to cellular facilities which cause a *de minimis* change in the licensee's CGSA, Proposed Section 22.123; (4) Modifications of facilities above Line A which do not involve a change in transmitter location or service contour, Proposed Section 22.163(d); and (5) Extensions into an adjacent market with the consent of the adjacent licensee, Proposed Section 22.912(a).
- The Commission should adopt explicit procedures for the use of its proposed finder's preference. Proposed Section 22.167. Detailed procedures are essential to protect existing licensees' rights under the Communications Act. The Commission should also clarify that the finder's preference does not apply to cellular frequencies.
- The Commission should modify its first-come, first-served proposal to permit adjacent licensees to file mutually-exclusive applications. Proposed Section 22.509. This will prevent licensees from being foreclosed from system expansion by speculative applicants.

- The Commission should not adopt its proposed ban on multi-frequency transmitters. Proposed Section 22.507. These transmitters are efficient and cost effective, especially in new or low volume markets. At a minimum, the Commission should grandfather all multi-frequency transmitters presently in use.
- The Commission should not adopt its proposal to preclude licensees from having multiple paging applications pending simultaneously. Proposed Rule 22.539. This rule would inhibit the legitimate build-out efforts of licensees and undermine service flexibility.
- The Commission should eliminate the BOC structural separation requirements. Proposed Rule 22.903. These rules are costly and unnecessary. In addition, it is essential that the Commission establish a level playing field for competition between PCS and cellular service providers.

The Commission's proposed rules would make more efficient the processing of applications and, in some cases, the build-out of facilities and the provision of the service to the public. Processing efficiency, however, should not come at the expense of the market-driven development of mobile communications systems. Some of the Commission's proposed rules and the modifications suggested by commentors would have such a detrimental impact. By adopting the proposals contained herein, the Commission will balance its goal of efficient licensing of systems with the service needs of licensees and the public.

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REPLY COMMENTS OF AMERITECH MOBILE COMMUNICATIONS, INC.

Ameritech Mobile Communications, Inc. (AMCI) respectfully submits this reply to the comments filed in the captioned docket.[1] The commentors universally support the Commission's stated goals in this proceeding -- namely, clarifying the rules, eliminating unnecessary filing requirements and giving licensees greater flexibility in providing service to the public. *NPRM*, 7 FCC Rcd at 3658 ¶ 1. While most of the proposed rules will make the Commission's processes more efficient, certain rules could have an unintended consequence: They could undermine licensees' legitimate efforts to build-out their systems and provide service to the public. Therefore, the Commission should modify its proposed rules as discussed herein.

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[1] *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, Notice of Proposed Rulemaking, 7 FCC Rcd 3658 (1992) ("*NPRM*").

COMMENTS

The Commission Should Initiate A Notice of Inquiry To Evaluate PageNet's, Proposed Market Licensing Scheme For 900 MHz Paging.

At the outset, one commentor suggested that the Commission fundamentally change the way it licenses 900 MHz paging frequencies. PageNet proposes that the Commission eliminate its existing transmitter-by-transmitter scheme and implement a market or system licensing scheme. PageNet at 5-10. If implemented properly, this proposal could better reflect the demands of the market. This proceeding, however, is not the proper forum for the Commission to make such a fundamental change. Therefore, the Commission should release a Notice of Inquiry to examine whether such a change would be consistent with the public interest and how to implement such a change without unreasonable disruption of service to the public.

Proposed Section 22.108(a)

The Commission Should Limit Disclosure Of Corporate Affiliates To Those Providing The Same Service In The Same Geographic Area.

The Commission proposes to broaden its real party in interest disclosure requirements by redefining the term "subsidiary". An applicant would now be required to identify as a subsidiary "any business for which the applicant, *any officer, director, stockholder or key manager of the applicant owns 5% or more*." Proposed Section 22.108(a) (emphasis added). The proposed rule contains no limitations on this disclosure requirement. As such, it would be unduly burdensome.

The proposed rule requires an applicant to disclose every company in which any officer or stockholder owns 5%, even if it is unrelated to mobile services or even communications. This could be thousands of subsidiaries. Read literally, this would even extend to a stockholder's consulting business. Not only is this unduly burdensome, there is no public interest reason for disclosure of this information.

The Commission should modify Proposed Section 22.108(a) to narrow its disclosure requirements. Disclosure should be limited to companies engaged in the same service in the same service area. In addition, the stockholder disclosure requirements should be limited to those stockholders who control the applicant. *See* BellSouth Appendix 2 at 8.

Proposed Section 22.115(a)(4)

The Commission Should Require Applicants To Submit Geographic Coordinates Using Both NAD27 and NAD83 Until NAD83 Becomes The Commission's Standard.

The Commission proposes to require applicants to submit geographic coordinates for transmitter sites based upon the 1927 North American Datum (NAD27). The Federal Aviation Administration (FAA), in contrast, requires applicants to provide geographic coordinates (since October 15, 1992) based upon the 1983 North American Datum (NAD83). This inconsistency between the FAA and the FCC is unnecessary and will increase costs to applicants.

In 1988, the Commission announced that it intends to switch to the NAD83. *See* GTE at 13. The final rules in this proceeding should begin the transition to establish consistency between the agencies. *See* NewVector Appendix 1 at 8. During the transition, the Commission should require applicants to file their applications with both sets of coordinates. *See* McCaw at 22. This filing process will facilitate the transition by creating a data base of existing licenses using the new system. The Commission should work expeditiously to accommodate filings which only contain coordinates based upon the NAD83.

Proposed Section 22.121(d)

The Commission Should Provide Exemptions From The One-Year No-Filing Penalty For Circumstances Beyond The Control Of The Applicant.

The Commission proposes that construction authorizations will terminate automatically if the facility is not placed in service by the expiration date. *See* Proposed Section 22.144. The Commission also proposes a penalty: Any party whose authorization is terminated automatically for failure to provide service to the public will be unable to apply for a new authorization for the same channel in the same geographic area for one year. This proposal will deter applicants from warehousing frequencies. It will also penalize applicants for events beyond their control. The Commission should modify this proposal.

First, the provision should exempt from the penalty automatic terminations which are caused by reasons beyond an applicant's control. For example, a licensee may be unable to secure zoning approval prior to the expiration of the authorization. Similarly, despite a licensee's efforts to ensure the availability of a transmitter site, it may be unable to complete the purchase of a planned site. In these cases, failure to initiate service is not abuse of the Commission's licensing scheme or an attempt to warehouse frequencies. Penalizing licensees in these circumstances will simply delay the timely and efficient provision of service to the public. The Commission should modify its proposed rule to provide for temporary extensions -- or at least an exemption from the penalty --

when a licensee is precluded from initiating service by events beyond its control. *See* BellSouth at 9, Appendix 2 at 11.[2]

In addition, the Commission should adopt the proposal of The Pacific Companies that a permittee should not be subject to this section if it voluntarily surrenders its authorization prior to expiration. Pacific Companies at 3; *see also* McCaw at 14. This provision would give permittees the incentive to surrender authorizations they subsequently determine they no longer need or will be unable to use. The Commission should promote this conduct. If a licensee were subject to the one-year constraint even if it turned back an authorization, it would be in a catch-22: It must construct facilities it does not want or it must cease system development for one year. In either case, it would lead to a waste of resources.

[2] In addition, the Commission should clarify that this rule does not apply to cellular service during the five-year fill-in period. *See* McCaw at 15. Since no other applicant can serve a cellular market during the fill-in period, the penalty provision would simply delay service to the public.

Proposed Section 22.123(e)(1)

The Commission Should Deem As "Minor" Any Change To Paging Facilities Which Does Not Increase A Licensee's Service Contour.

The Commission proposes that any increase in effective radiated power (ERP), change of transmitter location or increase in antenna height will require a (Form 401) major modification to a license. This proposal substantially limits a licensee's flexibility to provide service because it prohibits nominal changes which do not impact the service contour. There is no corresponding public interest benefit.

Licensees must regularly refine their systems to resolve technical problems and improve service to customers. Similarly, a licensee must react quickly to a hostile site owner or to remedy tower damage. Many of these changes (such as a slight increase in ERP) have no impact on the licensee's service contour, but have a big impact on quality of service. The Commission's proposal limits a licensee's flexibility to make these changes.

The Commission should facilitate nominal changes which have no impact on service contour. Specifically, the Commission should deem as "minor" changes to ERP, antenna height and transmitter location as long as they do not enlarge the licensee's existing contour. *See* Radiofone at 11.

Proposed Section 22.123(e)(2)

The Commission Should Increase The Flexibility Of Cellular Licensees By Narrowing The Definition Of "Major" Modifications.

The Commission proposes to classify as "major" any filing that will result in the establishment of a new cellular geographic service area (CGSA). Proposed Section 22.123(e)(2)(i)(A). There are at least three problems with the Commission's proposal:

First, the proposal conflicts with the Commission's new Unserved Area Rules which permit cellular carriers to expand their CGSAs at any time during the fill-in period simply by filing a Form 489.[3] *See* McCaw at 32; Telocator at 51. The Commission should conform this section of its proposed rules to reflect the Unserved Area Rules.

Second, the proposal substantially decreases a licensee's ability to make nominal modifications to its system in a timely manner. Licensees must constantly refine and modify their systems to maximize efficiency in serving the public. These modifications often result in a *de minimis* increase or decrease to a CGSA. The Commission proposes any such change would be "major" and require public notice and an opportunity to comment. This proposal decreases a licensee's ability to modify its system, even if such modification has no impact on adjacent licensees.

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[3] Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, Docket No. 90-6, Second Report and Order, 7 FCC Rcd 2449 (1992).

Instead, the Commission should adopt CTIA's proposal that any change to a cell site is "minor" if the resulting change to a CGSA is less than 5 miles (even after the fill-in period). CTIA at 5. Changes of less than five miles will have little impact on other licensees.[4] The Commission should allow licensees to make minor changes to their CGSAs without filing a Form 401.

Third, the proposal eliminates the existing rule which provides that consensual expansions into another market are "minor". As long as the extension is consensual, there is no public interest justification in requiring a licensee to incur the cost and delay of filing a Form 401 major amendment application. The only interested party has notice and already has consented. *See* New Par at 19; ALLTEL at 4; *see also* Proposed Section 22.912(a).[5] Thus, the Commission should allow licensees to modify facilities within a consented-to and approved extension without filing a Form 401. These proposals will facilitate flexible expansion while protecting the public interest.

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[4] Of course, if an adjacent licensee experiences interference as a result of a change in CGSA, the expanding licensee would be required to modify its facilities.

[5] The Commission should allow similar "minor" extensions after the five-year fill in period expires, as long as the extension does not cover any unserved area. Similarly, the Commission should clarify that an extension into another market is "minor" as long as it is within a previously approved extension. New Par at 20.

Proposed Section 22.128(c)(5)

The Commission Should Give Applicants For Facilities Above Line A An Opportunity To Resolve Any Unsatisfactory Coordination Response From Canadian Regulatory Authorities Prior To Dismissal.

The Commission proposes that an application will be dismissed if, after reasonable efforts to coordinate with a foreign government, it receives an unfavorable response regarding the application. This proposal is detrimental to applicants proposing to operate systems above Line A. Therefore, the Commission should modify its proposal to give applicants an opportunity to resolve an unsatisfactory response prior to dismissal.

Based upon AMCI's experience operating above Line A, it is often possible to resolve the Canadian government's interference concerns on an informal basis.[6] Under the Commission's proposal, however, an applicant will not have an opportunity to attempt such a resolution. The Commission will simply dismiss the application. Then, while the applicant is attempting to resolve the problem, it is possible that a mutually exclusive application will be filed -- thereby shutting out the original applicant. This result is inequitable and contrary to the public interest.

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[6] Since Part 22 applicants do not have access to a database of Canadian licensees, it is not uncommon for interference concerns to arise. It is also not uncommon for these interference concerns to be resolved.

Proposed Section 22.137

The Commission Should Not Require A Transferee or Assignee To Ensure Compliance Will All Regulations Prior To The Transfer Or Assignment Of A License.

The Commission proposes that a transferee or assignee will be responsible for ascertaining that the transferred station facilities are in compliance with the Commission's Rules, the Communications Act and all radio station authorizations prior to consummation of the transaction. The Commission should modify its proposal to impose this obligation after consummation of a transfer of control or assignment.

All licensees have an obligation to maintain their facilities in compliance with their radio station authorizations, the Rules and the Act. As part of a due diligence analysis prior to consummating a transfer of control or assignment, a transferee or assignee will attempt to determine whether the transferor's facilities are in compliance. It may be impossible, however, for a transferee or assignee to perform comprehensive testing on facilities prior to the transfer or assignment. Therefore, the Commission should not impose compliance responsibility on a transferee or assignee until consummation.

Proposed Section 22.142

The Commission Should Specifically Define "Service To The Public" As It Relates to Paging and RadioTelephone Service.

Certain commentors suggest that the Commission define the term "service to the public" as it relates to paging and radiotelephone service. *See, e.g.*, McCaw at 13; GTE at 9. The concept of "service to the public" is integral to the scheme outlined by the Commission in this re-write of Part 22. For example, the Commission proposes that any permittee who does not initiate "service to the public" within one year after receiving a construction permit forfeits that construction permit and cannot re-apply on the same frequency in the same market for one-year. Proposed Section 22.121(d). Similarly, any licensee who does not provide "service to the public" for 90 days will be deemed to have ceased operation on that frequency and be subject to "finder's" applications. Proposed Section 22.167. These provisions make it crucial that the Commission provide a fair, clear definition of "service to the public."

McCaw proposes that a paging or radiotelephone licensee will be deemed to be providing "service to the public" when its facility:

> is interconnected with the public switched telephone network (PSTN) and must be capable of providing paging and/or radiotelephone service.

McCaw at 13; *see also* PageNet at 20; GTE at 9. This proposed definition will further several of the Commission's goals in this proceeding. First, it will clarify the Commission's rules by establishing a verifiable standard by which licensees can plan their businesses. Licensees will know that they must build-out their systems and be ready to

provide service in order to protect their frequencies. This should reduce litigation over build-out issues. Second, McCaw's definition will deter warehousing of frequencies. A licensee will not incur the substantial expense of building out and activating facilities to provide service, just for the sake of warehousing. By increasing the cost, the Commission would decrease the likelihood of warehousing.

The Pacific Companies proposed that "service to the public" would require a "minimum number of non-affiliated revenue-producing customers." Pacific Companies at 5. The Commission should not adopt this proposal because it is too inflexible. A licensee in the process of building out a regional system may not have 1000 customers -- or even 100 customers -- for the first 90 days.[7] There is no public interest benefit in divesting a licensee of its authorization just because it is unable to attract a large number of customers during the build out of a system.

Similarly, the Commission should not adopt Page America's suggestion to define "service to the public" based upon subjective standards. Page America at 2-3. Standards such as "good faith" will lead to protracted litigation. This is not in the public interest.

[7] The Pacific Companies do not propose a specific level of loading requirements. In order for loading requirements to have any deterrent impact, they would have to be so high that they would undermine the legitimate build-out and service plans of licensees.

Proposed Section 22.142(b)

The Commission Should Allow Licensees Up To 15 Days To File A Form 489 After Commencing Service.

The Commission proposes to give licensees 15 days to file a Form 489 after initiating service. This proposal will promote efficiency by allowing licensees to make last minute changes to facilities while keeping filings accurate. The Commission should adopt this proposal without modification.

Proposed Section 22.147

The Commission Should Not Adopt Its Conditional Licensing Proposal.

The Commission proposes to eliminate its review of the technical exhibits to applications and make all license grants conditioned on the non-interference of the facilities. In the event the licensee does interfere, the Commission proposes to retain absolute discretion to order the licensee to suspend operations, without a hearing. This condition would exist for the entire license term (which is up to 10 years). *NPRM*, 7 FCC Rcd at 3659 ¶ 11-12.

The Commission should modify its proposal to reduce to one year the period during which grants are conditional. Prior to applying for a license, an applicant should coordinate with other licensees to ensure that there will be no interference. Once the system is operational, adjacent licensees should know within a short period of time whether the new facilities will cause interference. There is no reason for the Commission to keep license grants conditional after this initial period.

Moreover, conditional licenses could discourage investments in systems. Licensees will never have certainty regarding their service territories. This increases the risk of investing in system expansion. Similarly, this uncertainty could make it difficult to sell a system. A potential acquiror will not be certain what it is purchasing. The Commission should adopt Southwestern Bell's proposal that all license grants will be conditional for a period of one year. SBC at 15.

Proposed Section 22.163

The Commission Should Allow Form 489 Filings So That Licensees May Receive Interference Protection For Modified Facilities.

The Commission proposes to allow licensees to modify existing facilities without filing a Form 489. This proposal could save both Commission and licensee resources. Unless modified, however, the proposal will have negative consequences for licensees and diminish the value to the Commission.

First, the proposal appears to preclude licensees from filing Form 489s. This would have the unanticipated consequence of eliminating interference protection for any facility a licensee modifies. *See* BellSouth at 6, Appendix 2 at 26; NewVector at 8 and Appendix 1 at 23; Telocator at 51. The Commission should clarify that licensees have the option to file a 489, and thus protect their transmitters from interference. *See* NewVector at 8-9 and Appendix 1; Telocator at 51.

Second, the Commission proposes to expand the category of filings which will be deemed "major". *See* Proposed Section 22.123; p. 7-9 above. For example, a cellular licensee would not be able to fill-in within its market without filing a Form 401. *See* Proposed Section 22.123. Similarly, modifications to paging facilities which do not change the service contour nevertheless require a filing. *See* SBC at 20; Telocator at 51; McCaw at 32. The Commission should modify proposed Section 22.123 to expand the scope -- and the benefit -- of Section 22.163.

Third, while it appears that the Commission's goal is to eliminate the Form 489 filing requirement, this is not readily apparent from the text of the rule. The rule

eliminates the need for "prior Commission approval." A Form 489, however, is a notification filing, not an application for approval. Thus, the Commission should clarify that it is eliminating the "notification" requirement.

Proposed Section 22.163(b)

The Commission Should Allow Minor Changes To Facilities Operating Above Line A.

The Commission proposes that a licensee may not make "minor" modifications to facilities operating above Line A without prior approval. The Commission should modify this proposal in several ways. First, it should allow modifications without prior approval if they do not involve relocation of a transmitter or expansion of a service contour. As long as there is no change in service contour, adjacent Canadian licenses will not be impacted.

Second, the Commission should institute an expedited approval procedure for handling other modifications. Once coordination with the Canadian government is complete, the licensee should be notified immediately and allowed to implement the change. The Commission should take all appropriate steps to minimize the disadvantage to licensees operating above Line A.